

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

MARSHALL EARLY KUYKENDALL
TX-1330160-R

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DOCKETED COMPLAINT NO.
07-084

AGREED FINAL ORDER

On this the 20th day of February, 2009, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Marshall Early Kuykendall (Respondent).

In order to conclude this matter, Marshall Early Kuykendall agrees to this Order. However, he denies any adverse Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent Marshall Early Kuykendall is a Texas certified residential real estate appraiser, holds certification number TX-1330160-R, and has been certified by the Board during all times material to the above-noted complaint case.
2. On or about September 6, 2002, Respondent appraised real property located at 13910 Skyline Drive, Austin, Texas 78732 ("the property").
3. On or about February 20, 2007, the Board initiated an investigation related to an appraisal of the above property performed by Respondent.
4. On or about March 7, 2007 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent's response to the complaint was received.
5. Respondent was alleged to have violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which allegedly did not conform to USPAP in effect at the time of the appraisal report for the property:

- a) Respondent failed to state what report option was used;
- b) Respondent failed to identify and report the improvements adequately and omitted significant features which should have been reported and analyzed;
- c) Respondent failed to provide a brief summary of his rationale for his determination of the property's highest and best use;
- d) Respondent failed to use an appropriate method or technique to develop an opinion of the site value and to collect, verify, analyze and reconcile the cost of new improvements and accrued depreciation with regard to functional obsolescence;
- e) Due to the use of inappropriate comparable sales which were outside of the property's market area, and the failure to make appropriate adjustments, Respondent failed to collect, verify, analyze and reconcile comparable sales data properly and did not utilize recognized methods and techniques in his sales comparison approach; and
- f) Respondent failed to report, analyze and reconcile the current listing of the subject property.

6. Bona fide disputes and controversies exist between the parties, as to the issues in this matter both factual and legal.

7. The parties desire to compromise and settle all claims of any kind in this matter. The parties intend that the signing and accepting of the agreement is a full settlement of all claims or potential claims and defenses that are or could have been made herein.

8. The parties agree that while nothing in this agreement is or shall be deemed or considered an admission of fault or an adjudication of such, they desire to resolve this matter without the necessity of further time and expense in further proceedings and Respondent agrees to comply with this agreement.

CONCLUSIONS OF LAW

The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. In accordance with TEX. GOV CODE §2001.056 and TEX. OCC. CODE § 1103.458, the Board is authorized to dispose of this matter by agreed settlement.

Based on the above findings of fact and conclusions of law; Respondent agrees that he shall:

- a. Pay to the Board an administrative penalty of \$500.00;

- b. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- c. Attend and complete a minimum, 15 classroom-hour course in the sales Comparison Approach; and;
- d. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to possible further disciplinary action.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing requirements for certification.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY DAYS** of the date of this Agreed Final Order.

Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 11th day of February, 2009.

Marshall E. Kuykendall
MARSHALL EARLY KUYKENDALL

Ace Pickens
ACE PICKENS
ATTORNEY FOR RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 11th day of February, 2009, by MARSHALL EARLY KUYKENDALL, to certify which, witness my hand and official seal.

Mary Alford
Notary Public Signature



MARY ALFORD
Notary Public's Printed Name

Signed by the Commissioner this 20th day of February, 2009.

Timothy K. Irvine
Timothy K. Irvine, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 20th day of February, 2009.

C. P. Sayers
Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board